

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 304

(Delegate Jones, *et al.*)

Ways and Means

Budget and Taxation

---

**Education - Maintenance of Effort Requirement - Process and Factors**

---

This emergency bill expands the factors that must be considered when determining whether to issue a waiver for the county maintenance of effort (MOE) requirement for public schools. The State Superintendent of Schools, rather than the State Board of Education, must decide whether to issue an MOE waiver, and counties can appeal the State Superintendent's decision to the State board. The bill also excludes the local share of the foundation program from the MOE amount that may be waived by the State board and delays the MOE penalty until the year after a county fails to meet the MOE requirements.

The bill also alters the date by which a county governing body must apply for a waiver from the MOE requirement. By December 1, 2012, the Maryland State Department of Education must report on the implementation of the bill.

The bill terminates June 30, 2013.

---

**Fiscal Summary**

**State Effect:** Beginning in FY 2011, MOE waivers may be more frequent due to the increased conditions that must be considered when deciding on waivers. Thus, general fund expenditure reductions due to MOE penalties may be less frequent. In addition, any MOE penalties will be withheld the year after an MOE violation occurs.

**Local Effect:** Beginning in FY 2011, county (and Baltimore City) governments may receive MOE waivers more frequently, reducing local funding for local school systems but potentially avoiding reductions in State aid due to MOE noncompliance penalties. Excluding the local share of the foundation program from an MOE waiver effectively caps the amount of funds that can be waived. Any MOE penalties will be withheld from

school systems the year after an MOE violation occurs, avoiding decreases in State and local funding in the same fiscal year.

**Small Business Effect:** None.

---

## Analysis

**Bill Summary:** When determining whether to grant an MOE waiver, the State Superintendent must consider the following factors:

- a broad economic downturn affecting more than one county;
- a county governing body's history of exceeding the MOE requirement;
- the existence of an agreement between a local governing body and a local board of education that a waiver should be granted; and
- significant reductions in State aid to the county and municipalities of the county for the fiscal year for which a waiver is applied.

In addition, the State Superintendent *must* consider the four factors that the State board *may* currently consider according to regulation.

A county governing body must apply to the State Superintendent for a waiver from the MOE requirement by the earlier of the seventh day following the end of the legislative regular session or April 20. The State Superintendent must then inform the governing body in writing whether the waiver application has been granted or denied no later than 30 days after receipt of an application or by May 20, whichever is earlier.

If the State Superintendent denies a county a waiver in whole or in part, the county may appeal the decision to the State board. The appeal must be in writing and filed no later than five days after the county receives the decision of the State Superintendent. The State board must promptly conduct a hearing on the appeal and render a written decision whether to uphold, modify, or overturn the decision of the State Superintendent by June 1. The decision of the State board must be made on substantive grounds in accordance with the factors the State Superintendent had to consider. The decision of the State board is final.

**Current Law:** According to regulation, the State Board of Education's decision on whether to approve or deny in whole or in part a waiver request must be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the MOE requirement. The State board may consider the following factors when making this determination:

- external environmental factors such as a loss of a major business or industry;
- a county's tax base;
- rate of inflation relative to growth of student population; and
- the MOE requirement relative to the county's statutory ability to raise revenues.

To receive a waiver from the MOE requirement, a county must apply to the State Board of Education by April 1, and the State board must make a determination by May 15.

Counties that do not receive waivers from the State board and fail to make MOE are penalized by withholding increases in specified State education aid programs in the year in which the MOE violation occurs.

**Background:** To be eligible for increases in State education aid under Section 5-202 of the Education Article (the State share of the foundation program, the State's largest aid to education program; the geographic cost of education index; and the supplemental grant), a local jurisdiction must provide at least as much funding per pupil to the local school system as it provided in the previous fiscal year. Chapter 175 of 1996 added a waiver provision that allows counties to request from the State Board of Education a partial or temporary waiver from the MOE requirement. Until fiscal 2010, the waiver option had never been used, but in spring 2009, three counties (Montgomery, Prince George's, and Wicomico) applied for waivers for fiscal 2010. All three applications were denied by the State Board of Education.

In July 2009, the Joint Legislative Work Group to Study State, County, and Municipal Fiscal Relationships was convened by the President of the Senate and the Speaker of the House of Delegates. The bill generally implements a recommendation by the group that adjustments be made to the MOE waiver process, including changing the county application deadline, changing the State Board of Education decision deadline, codifying the four factors that the State board currently uses in deciding whether to grant a waiver, and adding several more factors to be considered by the State board.

**Local Fiscal Effect:** With the addition of factors that the State Superintendent must consider when deciding whether to waive MOE for applying jurisdictions, the bill is likely to make waivers from the MOE requirement more frequent. This may result in reductions to *local* funding for public education, but it may also reduce the number of counties that are penalized through reductions in *State* funding for education.

The bill also establishes a floor for local appropriations to boards of education. In effect, counties would not be able to seek a waiver from the local share of the foundation program and could only pursue waivers from MOE amounts above the local share of the

foundation program. In practice, this provision, while setting a cap on the amount of any waiver request, is likely to have very little operational effect since most counties are well above the required local share of the foundation. As an example, fiscal 2010 MOE appropriations are compared to the required local share of the foundation in **Exhibit 1**. As shown in the exhibit, county MOE appropriations collectively surpassed the local share of the foundation by \$2.5 billion. Under the bill, the local share of the foundation, which was \$2.7 billion in fiscal 2010, could not be waived.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 310 (Senator Kasemeyer, *et al.*) - Budget and Taxation.

**Information Source(s):** Maryland State Department of Education; Carroll, Harford, and Montgomery counties; Department of Legislative Service

**Fiscal Note History:** First Reader - February 23, 2010  
ncs/mwc Revised - House Third Reader - March 31, 2010

---

Analysis by: Caroline L. Boice

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

---

**Exhibit 1**  
**Maintenance of Effort Requirements and Local Share of the Foundation Formula**  
**Fiscal 2010**

| <b>County</b>   | <b>Required MOE</b>    | <b>Local Share<br/>of Foundation</b> | <b>Maximum<br/>Amount that<br/>Could Be Waived</b> |
|-----------------|------------------------|--------------------------------------|--|
| Allegany        | \$27,702,592           | \$14,678,295                         | \$13,024,297                                       |
| Anne Arundel    | 553,103,842            | 302,674,357                          | 250,429,485  |
| Baltimore City  | 199,427,631            | 139,971,125                          | 59,456,506   |
| Baltimore       | 629,418,307            | 335,127,718                          | 294,290,589  |
| Calvert         | 98,287,497             | 47,411,248                           | 50,876,249   |
| Caroline        | 12,145,724             | 10,626,441                           | 1,519,283  |
| Carroll         | 155,271,417            | 78,572,664                           | 76,698,753   |
| Cecil           | 68,368,269             | 39,270,445                           | 29,097,824   |
| Charles         | 145,091,628            | 67,333,294                           | 77,758,334   |
| Dorchester      | 17,034,817             | 11,557,179                           | 5,477,638  |
| Frederick       | 228,631,147            | 113,901,370                          | 114,729,777  |
| Garrett         | 22,610,922             | 14,276,274                           | 8,334,648  |
| Harford         | 208,250,169            | 103,553,483                          | 104,696,686  |
| Howard          | 450,473,111            | 181,904,427                          | 268,568,684  |
| Kent            | 16,648,957             | 10,195,946                           | 6,453,011  |
| Montgomery      | 1,529,565,696          | 686,579,502                          | 842,986,194  |
| Prince George's | 538,104,085            | 318,101,897                          | 220,002,188  |
| Queen Anne's    | 47,595,619             | 29,201,053                           | 18,394,566   |
| St. Mary's      | 74,139,685             | 43,650,872                           | 30,488,813   |
| Somerset        | 8,589,510              | 5,852,321                            | 2,737,189  |
| Talbot          | 34,211,041             | 30,718,267                           | 3,492,774  |
| Washington      | 86,213,678             | 52,240,418                           | 33,973,260   |
| Wicomico        | 50,781,711             | 28,584,437                           | 22,197,274   |
| Worcester       | 71,954,064             | 60,510,680                           | 11,443,384   |
| <b>Total</b>    | <b>\$5,273,621,120</b> | <b>\$2,726,493,713</b>               | <b>\$2,547,127,407</b>                             |

Source: Department of Legislative Services

---